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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/040,833

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Pieter Van Dine

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7590

09/21/2005

HOWREY LLP

C/O IP DOCKETING DEPARTMENT  
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EXAMINER

COMAS, YAHVEH

ART UNIT

PAPER NUMBER

2834

DATE MAILED: 09/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/040,833

Applicant(s)

VAN DINE ET AL.

Examiner

Yahveh Comas

Art Unit

2834

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground of rejection.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

1. Claims 1-2, 6-11, 15-16 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niemkiewicz U.S. Patent No 3,143,676 in view of Smith et al. 6,609,421.

Niemkiewicz disclose a motor (10) having a canned stator (18) and rotor (11) wherein the rotor is supported for rotation within stator, and a preformed cylindrical can

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member (28) removably, which is inherently reusable, affixed to stator and at least one sealing ring (31) for the cylindrical can member (28) to the member to which it is affixed and also the can member (28) is affixed by screws (32). Niemkiewicz discloses the claimed invention except for the can member being a composite can member. However Smith disclose the use of a composite can member made of fiber reinforced polymer material for stator and rotor in order to avoid losses associated with metallic canning, assured corrosion and leak resistance and improved accuracy in positioning of the stator and rotor using a machined inner surface of the composite inner layer for the stator and/or a machined outer surface of the outer composite layer for the rotor.

Therefore, it would have been obvious to one having skill in the art at the time the invention was made to provide a composite can member since that would had been desirable in order to avoid losses associated with metallic canning, and assure corrosion and leak resistance as disclosed by Smith.

Referring to claims 8, no patentable weight has been given to the method of manufacturing limitations (i. e. dry lay-up resin transfer molding, wet and pre-impregnated, and filament winding techniques) since "even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985)

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2. Claim 3-4, 12-13 and 17-18 rejected under 35 U.S.C. 103(a) as being unpatentable over Niemkiewicz U.S. Patent No 3,143,676 in view of Smith et al. 6,609,421 and in further view of Kanemitsu et al. JP Patent No 08159075 A.

Niemkiewicz in view of Smith discloses the claimed invention except for a surface between the rotor and the stator having ridges to control flow of liquid through the space. However Kanemitsu discloses a stator surface between the stator and the rotor having ridges (27) in order to increase the fluid resistance between the stator and the rotor.

Therefore, it would have been obvious to one having skill in the art at the time the invention was made to provide a surface between the rotor and the stator having ridges to control the flow of liquid through the space since that would had been desirable in order to increase the fluid resistance between the stator and the rotor.

3. Claims 5, 14 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niemkiewicz U.S. Patent No 3,143,676 in view of Smith et al. 6,609,421 and in further view of Kohihaas et al. U.S. Patent No. 6,454,547.

Niemkiewicz in view of Smith disclose the claimed invention except for a surface between the rotor and the stator having ridges to control flow of liquid through the space.

However, Kohihaas discloses a composite can member having a surface facing a space between the rotor (4) and the stator (3) in which ridges are formed to control flow of liquid through the space. The ridges extend at an angle to a plane perpendicular to

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the axis of the motor circumferentially around the surface of the composite can member facing the space between the rotor (4) and the stator (3).

Therefore it would have been obvious to one having skill in the art at the time the invention was made to modified Niemkiewicz's inventions and provide a surface facing a space between the rotor and the stator with ridges since that would had been desirable to control flow of liquid through the space as disclosed by Kohihaas.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kramer et al. U.S. Patent No. 3,067,690 discloses also a reusable can member 6 for a canned electric motor (see column 3, lines 20-26).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yahveh Comas whose telephone number is (571) 272-2020. The examiner can normally be reached on 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Darren Schuberg can be reached on 571-272-2044. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

YC

  
DARREN SCHUBERG  
SUPERVISORY PATENT EXAMINER  
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